

November 15, 2007

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File Nos. **L05P0023** and **L07AE001**  
Proposed Ordinance No. **2007-0538**

**WILLOWS ASSEMBLY**

Preliminary Plat Application and Critical Areas Alteration Exception

Location: 13220 – 136th Avenue Northeast

Applicant: **Burnstead Construction**  
Attn: Tiffany Brown  
11980 Northeast 24th Street, Suite 200  
Bellevue, Washington 98005  
Telephone: (425) 454-1900, Ext. 234

King County: Department of Development and Environmental Services (DDES)  
*represented by* **Trishah Bull**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055  
Telephone: (206) 296-6758  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Approve subject to conditions
Department's Final Recommendation:	Approve subject to revised conditions
Examiner's Decision:	Approve subject to further revised conditions

**EXAMINER PROCEEDINGS:**

Hearing Opened:	October 30, 2007
Hearing Closed:	October 30, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

**1. General Information:**

Applicant:	Tiffany Brown Burnstead Construction 11980 NE 24 <sup>th</sup> Street, Suite 200 Bellevue, WA 98005 425-454-1900 x234
Engineer:	Geoff Tamble The Blue Line Group 25 Central Way, Suite 400 Kirkland, WA 98033 425-216-4051
STR:	SW-22-26-5 NW-27-26-5
Location:	The site is located at 13220 136 <sup>th</sup> Avenue NE and includes southerly parcels on the east side of the 136 <sup>th</sup> Avenue NE and NE 132 <sup>nd</sup> Street intersection.
Zoning:	R-6
Acreage:	9.33 acres
Number of Lots:	51
Density:	5.5 units per acre
Lot Size:	Ranges from approximately 4,600 to 8,300 square feet
Proposed Use:	Single-family detached dwellings
Sewage Disposal:	Woodinville Water District
Water Supply:	Woodinville Water District
Fire District:	King County District No. 36
School District:	Lake Washington School District No. 414

Application completeness date: November 18, 2005

2. Except as may be modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation (KCDOT) testimony are found to be correct and are incorporated herein by reference.
3. The subject property is a blocky L-shaped parcel with a rectangular exception on the western boundary, approximately 9.33 acres in area. It is located on the east side of 136th Avenue Northeast at its T-intersection with Northeast 132nd Street, in the unincorporated Kirkland area. The surrounding area is developed with a mix of single-family residences and vacant parcels, with a mix of densities reflecting the area's ongoing urbanization with suburban-scale residential development. The property is located in the Sammamish River Basin and has a rolling topography with a general moderate slope to the east. The property is developed with an existing

residence; otherwise it is generally wooded with a native species overstory and typical undercover and grasses. An unused Burlington Northern Santa Fe (BNSF) railroad right-of-way runs north-south approximately 500 feet east of the easternmost portion of the property.

4. Applicant Burnstead Construction proposes subdivision of the property into 51 lots for detached single-family dwellings and additional tracts for recreation, drainage facilities and lot access. The proposed development density would be approximately 5.5 dwelling units per acre, with lot sizes ranging from approximately 4,600 to 8,300 square feet in area. Public road access would be provided by the extension of an east-west road into the site from the 136th Avenue Northeast frontage. The east-west internal road would terminate in a stub in the interior of the northeast portion of the site. Two side roads would branch southerly from the entry road to form a connected road network in the southern portion. Two stub termini would result on the southern boundary, for future public road extension upon development of properties to the south. The subdivision development will provide an onsite recreation area which will be sufficiently central with convenient and safe access from all lots.
5. The site's current surface water drainage consists of sheetflow in four subbasins, generally flowing east offsite until intercepted and mostly combined by the BNSF railroad grade. The grade directs the combining flow from three of the subbasins in a northerly direction to a catch basin, from which the flow crosses under the grade and runs east to a ditch system in the undeveloped 141st Avenue Northeast right-of-way. The only exception is the southernmost sub-basin, from which the flows turn southerly upon reaching the railroad grade. The development's drainage plan contemplates collection of most runoff from the site and conveyance to a single drainage facility in the eastern portion of the site, which will provide detention and water quality maintenance in an underground vault. (A drainage adjustment has been granted by DDES under the county code to allow for combination of the drainage subbasins to a single discharge point from the site.) The detained flows will be released under Conservation flow control standards of the 2005 King County Surface Water Design Manual (KCSWDM) and conveyed east in a tightline (underground pipe) to the railroad grade and then turn north to connect to the existing catch basin (the standpipe of which is substandard and will be replaced with the subdivision construction). Current sheet flows onto adjoining properties will be significantly reduced.
6. The off-site storm drainage tight line, as well as sewer mains providing sanitary sewer service to the proposed subdivision, must be installed in a Category III Wetland in the BNSF right-of-way. Approximately 325 square feet of wetland area and 13,570 square feet of wetland buffer will be impacted. The applicant has applied for a Critical Areas Alteration Exception, which exception is recommended for approval by DDES. The Examiner concurs with DDES's analysis, findings and conclusions addressing the alteration exception, and the recommendation for approval subject to conditions which are imposed herein.
7. Updated certificates of availability of public water and sanitary sewer service are submitted into the record.
8. Traffic impacts of the proposed development will be adequately mitigated under applicable county code requirements. Resident public school children will walk to their respective elementary and junior high schools and will be bused to their high school. Walkway conditions to the respective schools and to the high school bus stop consist of sidewalks and paved shoulders, providing adequate safety for resident school pedestrians.

9. The applicant requests that the road standard applied to the entry road segment from 136th Avenue Northeast to the first internal road intersection (Road A from 136th Avenue Northeast to the intersection with Road D as reflected on exhibits 8 and 17) be allowed to be reduced so that it may have sidewalk improvements on only one side rather than both sides as required by the standard. Generally, compliance with adopted road standards is not under the Examiner's authority. The Examiner would also be hesitant to preempt the formal variance process authorized under the King County Roads Standards (KCRS). Only when a road standards issue would directly affect preliminary plat approval under state subdivision and county code would it be addressed by the Examiner. Accordingly, in this case the Examiner must leave the Applicant's request to be decided by the County Road Engineer through the variance process, and shall reflect that recognition of the Road Engineer's authority in the conditions of approval. The Examiner shall, however, add a caveat that if a variance is granted, the subdivision must be formally found by the Road Engineer to still make appropriate provisions for school pedestrian safety and for convenient access to the internal recreation tract from all residential lots.

#### CONCLUSIONS:

1. The requested Critical Area Alteration Exception under file L07AE001, as conditioned below, conforms to the applicable approval criteria.
2. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-6 zone.
3. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
4. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
5. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on June 1, 2007, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

#### DECISION:

The Critical Areas Alteration Exception requested under file L07AE001 for the development of the *Willows Assembly* subdivision is approved subject to the following conditions:

1. The installation and construction of the surface water conveyance pipe through the wetland and buffer shall be conducted during summer low water periods.
2. Erosion control measures shall be in-place during construction to assure that no sediment or sediment-laden water enters the wetland or other natural drainage features.

3. A final mitigation plan shall be prepared and submitted during the plat engineering review phase. Mitigation shall be conducted in substantial conformance with the submitted mitigation plan as presented with the alteration exception permit.
4. The applicant shall be required to submit a financial guarantee to assure the implementation and success of the wetland and buffer mitigation plan. The mitigation shall be monitored for a period of three years after completion to insure that the mitigation is successful. Monitoring reports shall be submitted on the 1st, 2nd, and 3rd years following completion of the restoration work.
5. Prior to the initiation of any on-site alterations, the construction/clearing area shall be flagged in a highly visible manner. Flagging shall remain in place until construction is completed. These field markers shall be inspected and field verified by King County DDES Site Inspector or Critical Areas Ecologist.

The preliminary plat of the *Willows Assembly* subdivision, as revised and received June 1, 2007, is approved subject to the following conditions of approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the density requirements of the R-6 zone classification. All lots shall meet the dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended.
5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards of Chapter 17.08 KCC.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the approved preliminary plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the King County Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
  - a. Drainage plans and analysis shall comply with the 2005 SWDM and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
  - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.

- c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # \_\_\_\_\_ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
  - d. The drainage facilities shall meet the requirements of the 2005 SWDM. The site is subject to the Conservation flow control and Basic water quality requirements of the 2005 SWDM.
  - e. A drainage adjustment (L05V0096) is approved for this site. All conditions of approval for this adjustment shall be met prior to approval of the engineering plans.
  - f. To implement the required Best Management Practices (BMP's) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2005 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMP's for site development.
  - g. A drainage tightline is required over the steep slope to the east, per Core Requirement 1 of the SWDM. Note that an offsite conceptual storm drain outfall plan was received January 10, 2007, (L07AE001). The tightline shall be designed in general conformance with this plan; unless otherwise approved by DDES. Offsite easements are required for this improvement, prior to engineering plan approval.
7. The proposed subdivision shall comply with the King County Road Standards (KCRS) including the following requirements:
- a. Road A from 136th Ave NE to Road D shall be improved at a minimum to the urban subcollector street standard. Road A from Road D to Road C shall be improved at a minimum to the urban subaccess street standard. Road A from Road C to the east end shall be improved at a minimum to the urban minor access street standard. If any road standards variance is granted by the Road Engineer, the subdivision must be formally found by the Road Engineer to still make appropriate provisions for school pedestrian safety and for convenient access to the internal recreation tract from all residential lots.
  - b. Roads B, C, and D shall be improved at a minimum to the urban subaccess street standard. This shall include a temporary turnaround at/near proposed Lots 1 and 35 – 38 as shown on the revised plat map.

- c. FRONTAGE: The frontage along 136th Ave NE adjoining Lots 36 thru 39 shall be improved to the urban neighborhood collector standard on the east side; with a minimum 11 foot wide lane on the west side. A minimum 5 ft. wide shoulder is also required on the west side. Appropriate tapers are required to transition to the existing roadway. This improvement shall be designed in general conformance with the preliminary plat map/improvement plan received June 1, 2007; unless otherwise approved by DDES. R/W shall be provided for this improvement per the above plan.
  - d. The joint use driveway tracts shall be improved per Section 3.01 of the KCRS. These Tracts shall be owned and maintained by the Lots served.
  - e. The private access tracts shall be improved per Section 2.09 of the KCRS. These Tracts shall be owned and maintained by the Lots served. Tract C shall include an easement to King County for maintenance of the stormwater detention facility, and a pedestrian access easement.
  - f. A Type III barricade shall be installed at the southerly temporary terminus of Road B, at proposed Lots 1 and 39. Signage shall be manufactured (aluminum sign blank) and installed (using tamper-resistant hardware) on the barricade that identifies that the roadway is temporarily closed and will be extended with future development. The sign shall provide the following message “(street name) is temporarily barricaded and is required to be extended upon future development. Please contact King County DOT Traffic Impacts Unit at (206) 296-6596 for information.”
  - g. A Type III barricade shall be installed at the southerly temporary terminus of Road C, at proposed Lots 7 and 8. Signage shall be manufactured (aluminum sign blank) and installed (using tamper-resistant hardware) on the barricade that identifies that the roadway is temporarily closed and will be extended with future development. The sign shall provide the following message “(street name) is temporarily barricaded and is required to be extended upon future development. Please contact King County DOT Traffic Impacts Unit at (206) 296-6596 for information.”
  - h. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
- 8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
  - 9. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
  - 10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final

approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

11. The planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.
12. The proposed subdivision shall comply with the Critical Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
13. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
  - a. A detailed recreation space plan (i.e. area calculations, dimensions, landscape specifications, equipment specifications, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the engineering plan.
  - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
14. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
15. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
  - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
  - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
  - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
  - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.



- e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
  - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
  - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if 136<sup>th</sup> Avenue NE is on a bus route. If 136<sup>th</sup> Avenue NE is a bus route, the street tree plan shall also be reviewed by Metro.
  - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
  - i. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
16. **SPRINKLER REQUIREMENT:** All future residences constructed within this subdivision are required to be sprinkled NFPA 13D unless the requirement is removed by the King County Fire Marshal or his/her designee. The Fire Code requires all portions of the exterior walls of structures to be within 150 feet (as a person would walk via an approved route around the building) from a minimum 20-foot wide, unobstructed driving surface. To qualify for removal of the sprinkler requirement driving surfaces between curbs must be a minimum of 28 feet in width when parking is allowed on one side of the roadway, and at least 36 feet in width when parking is permitted on both sides.
17. The subdivision shall conform to KCC 16.82 relating to grading and tree retention on private property.

ORDERED November 15, 2007.

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Peter T. Donahue  
King County Hearing Examiner

TRANSMITTED November 15, 2007 to the following parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before November 29, 2007***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before December 6, 2007***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3<sup>rd</sup> Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE OCTOBER 30, 2007, PUBLIC HEARING ON DEPARTMENT OF  
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L05P0023.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Trishah Bull, Bruce Whittaker and Kristen Langley, representing the Department; Tiffany Brown, representing the Applicant, and Geoff Tamble.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services file no. L05P0023
- Exhibit No. 2 Department of Development and Environmental Services file no. L07AE001
- Exhibit No. 3 Department of Development and Environmental Services Preliminary Report, dated October 30, 2007
- Exhibit No. 4 Application for Land Use Permits received November 18, 2005
- Exhibit No. 5 Environmental Checklist dated January 10, 2007 (Revised)
- Exhibit No. 6 SEPA Determination of Non-Significance issued October 5, 2007
- Exhibit No. 7 Affidavit of Posting indicating a posting date of January 3, 2006; received by DDES on January 9, 2006 as the date the affidavit was received by the Department of Development and Environmental Services
- Exhibit No. 8 Preliminary plat map dated June 1, 2007 (Revised)
- Exhibit No. 9 Level 1 Downstream Drainage Analysis received June 23, 2006 (Revised)
- Exhibit No. 10 conceptual Drainage & Utility Plan received June 1, 2007 (Revised)
- Exhibit No. 11 Critical Areas Study received January 10, 2007
- Exhibit No. 12 Geotechnical Evaluation by ABPB Consulting, LLC received June 23, 2006
- Exhibit No. 13 Traffic Impact Analysis by Transportation Engineering Northeast received November 22, 2005
- Exhibit No. 14 Approved KCSWDM Adjustment L05V0096
- Exhibit No. 15 King County Certificate of Water Availability
- Exhibit No. 16 King County Certificate of Sewer Availability
- Exhibit No. 17 Sidewalks A & B